



June 8, 2007

**VIA ELECTRONIC FILING**

Marlene M. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Meeting on behalf of Core Communications, Inc. in  
CC Docket No. 01-92 and WC Docket No. 06-100**

Dear Ms. Dortch:

I hereby submit this notice of an *ex parte* meeting held on June 7, 2007 between Core Communications, Inc. ("Core") and Diane Holland, Christopher Killion, and Tamara Preiss of the Commission's Office of General Counsel. Bret Mingo and I attended the meeting on behalf of Core. During the meeting, we discussed Core's pending forbearance petition related to rate regulation pursuant to sections 251(g) and 254(g) of the Communications Act of 1934, as amended. During the meeting, I distributed the attached document, which served as the basis for discussion.

Sincerely,

Michael B. Hazzard  
*Counsel for Core Communications, Inc.*

Attachment

cc: Diane Holland (via electronic mail)  
Christopher Killion (via electronic mail)  
Tamara Preiss (via electronic mail)

## **The Commission Has Concluded That 251(g) Is a Limitation On 251(b)(5)**

### **Forbearance From Section 251(g) Rate Regulation Would Leave 251(b)(5) Rate Regulation**

Section 251(g) “is merely a continuation of the equal access and nondiscrimination requirements and nondiscrimination provisions of the [AT&T] Consent Degree until superseded by subsequent regulations of the Commission. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, 407, ¶ 47 (1999)

“[W]e conclude that Congress, through section 251(g), expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic.” *ISP Remand Order* at ¶ 3 (footnote omitted).

“Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations.” *ISP Remand Order* at ¶ 32.

“We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). Thus, the statute does not mandate reciprocal compensation for ‘exchange access, information access, and exchange services for such access’ provided to IXC’s and information service providers. Because **we interpret subsection (g) as a carve-out provision**, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and *not* the universe of traffic that falls within subsection (b)(5). *ISP Remand Order* at ¶ 32 (emphasis added)(footnote omitted).

“Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5)....” *ISP Remand Order* at ¶ 35.

All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access. Before Congress enacted the 1996 Act, LECs provided access services to IXC’s and to information service providers in order to connect calls that travel to points - both interstate and intrastate - beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. *ISP Remand Order* at ¶ 37.

“By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services.” *ISP Remand Order* at ¶ 40.

“[S]ection 251(g) serves as a limitation on the scope of ‘telecommunications’ embraced by section 251(b)(5)....” *ISP Remand Order* at ¶ 40.

**The Court's Support The FCC's Construction  
Of Section 251(g) As A Limit On 251(b)(5) Until Superseded**

In *World Com v. FCC*, 288 F.3d 429, 432 (DC Cir. 2002), the court noted that “[o]n its face, § 251(g) appears simply to provide for the ‘continued enforcement’ of certain pre-Act regulatory ‘interconnection restrictions and obligations,’ including the ones contained in the consent decree that broke up the Bell System, until they are explicitly superseded by Commission action implementing the Act.” The basis for the court’s remand to the FCC was not whether 251(g) served as a temporary limit on 251(b)(5), but whether ISP-bound traffic could properly be categorized as 251(g) “information access” traffic. *See id.* at 433.

In *Competitive Telecom. Ass’n v. FCC*, 117 F.3d 1068, 1072-1073 (8th Cir. 1997), the court found that “it is clear from the Act that Congress did not intend all access charges to move to cost-based pricing, at least not immediately. The Act plainly preserves certain rate regimes already in place. Under § 251(g), a LEC shall provide exchange access, information access, and exchange services for such access to [IXCs] and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (*including receipt of compensation*) that apply to such carrier on the date immediately preceding February 8, 1996 [date of enactment] under any court order, consent decree, or *regulation, order, or policy of the [FCC]*, until such restrictions and obligations are explicitly superseded by regulations prescribed by the [FCC] after February 8, 1996. *Id.* § 251(g)(emphasis added). In other words, the LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the pre-Act regulations and rates. This section leaves the door open for the promulgation of new rates at some future date, but any possible new exchange access rates for interstate calls will not carry the same deadline or the same cost-based restrictions as will those for interconnection and unbundled network elements specifically mentioned in § 252(d)(1).”